

Exhibit G

COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID RITTER,) No. 2021-C-2805
)
Appellant)
)
v.)
)
LEHIGH COUNTY BOARD OF)
ELECTIONS,)
)
Appellee)

NOTES OF TESTIMONY

(HEARING)

BEFORE THE HONORABLE EDWARD D. REIBMAN
Monday, November 22, 2021
11:08 a.m.
Courtroom No. 2A
Lehigh County Courthouse
Allentown, Pennsylvania

APPEARANCES:

ROBERT P. DADAY, ESQ.
-- On behalf of the Appellant

JOSHUA S. MAZIN, ESQ.
-- On behalf of the Appellee

ADAM C. BONIN, ESQ.
-- On behalf of the Intervenor,
Zachary Cohen

* * *

LEAH C. NELSON
Official Court Reporter

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1 THE COURT: Good morning.

2 THE PARTIES: Good morning.

3 THE COURT: Okay. This is the matter
4 of David Ritter versus Lehigh County Board of
5 Elections. Let me just explain one ruling. There
6 was a request, I think, from one of the
7 representatives of our local media to type on his or
8 her computer, laptop, and I denied the request. It
9 was just presented to me.

10 I did it off the cuff, and I did it
11 because we don't allow recordings in the courthouse
12 in courtrooms other than the official court
13 reporter. And my concern is that even though this
14 is a legitimate member of the press, that's not the
15 issue. It's just that I thought that there would be
16 some concern that other people would then start
17 pulling out their cell phones and start typing and
18 doing things, and I just think it gets out of
19 control.

20 So to the individual from the press --
21 and I don't know who it is, but to the individual
22 from the press, I apologize. I just think that
23 until we've had an opportunity to think this out a
24 little better in terms of what we do with electronic
25 devices, even from the media in the courtroom, I

1 decided not to do it. But you can certainly take
2 notes, as the lawyers can as well. Okay.

3 Mr. Mazin, you represent the county
4 board of elections.

5 MR. MAZIN: Yes, Your Honor.

6 THE COURT: All right. Ready to
7 proceed?

8 MR. MAZIN: Yes, Judge.

9 THE COURT: Mr. Daday, you represent
10 Dave Ritter.

11 MR. DADAY: Yes, Your Honor.

12 THE COURT: Ready to proceed? Ready to
13 proceed?

14 MR. DADAY: Yes.

15 THE COURT: And, Mr. Bonin, you
16 represent Mr. Zac Cohen.

17 MR. BONIN: Yes, Your Honor. And we're
18 ready to proceed as well.

19 THE COURT: Okay. Good. I have a
20 first question, and that is, help me out, with
21 regard to timing. As I understand it, the board of
22 elections is supposed to meet later this afternoon
23 to certify the election. And my question is, what
24 impact does that have on me in terms of when I have
25 to give my ruling?

1 Now, I understand that this is a matter
2 of great concern to those who are involved. I get
3 that, and I want to be thoughtful about it. I want
4 to have some time to mull through whatever it is
5 that we go through today. But I also want to set it
6 up because I'm going to assume, as I've had a
7 conference with counsel last week and we talked
8 about it, I assume that there may very well be an
9 appeal to this case.

10 And I want to make sure that there's
11 nothing that I do that prejudices either of the
12 parties or any of the parties in any way in terms of
13 vindicating their rights through the appellate
14 system. So do I have to make this decision before
15 the board of elections certifies the results? And
16 maybe you haven't thought about that, but that is a
17 matter of concern to me. I don't want to mess
18 anybody up.

19 MR. MAZIN: Judge, I believe there's
20 case law that states the certification is delayed
21 until all the petitions have been resolved.

22 THE COURT: Okay. Do you need an order
23 that -- do I have the authority and do you need an
24 order to stay the certification with regard to
25 this elect -- with regard to this ballot?

1 MR. BONIN: Judge, if I can interject,
2 I don't believe so. The statute under which we are
3 proceeding, 25 P.S. 3157(b), explicitly states:
4 Pending such appeal, the county board shall suspend
5 any official certification of the votes cast in such
6 election district.

7 THE COURT: All right. So we're all in
8 agreement. Is there any dispute? We're all in
9 agreement that if I don't get this thing decided by
10 this afternoon, that there's no harm, no prejudice,
11 to either Mr. Cohen or Mr. Ritter?

12 MR. BONIN: There's no prejudice to
13 either of our parties. At least, I can only speak
14 for us. There's no prejudice to us. The only other
15 thing that I would say is that, if these ballots are
16 to be opened, then these votes not only count in the
17 common pleas race, these votes will count in every
18 race. And so it is not just as to the common pleas
19 race as to which certification is suspended.

20 THE COURT: So if I don't decide this
21 case by the time the board of elections meets today,
22 does that mean that all Lehigh County -- all issues
23 on those ballots are stayed in terms of the
24 certification? I think I see Ms. Murray nodding her
25 head up and down. Okay.

1 MR. BONIN: I believe that's the case,
2 Judge.

3 THE COURT: Okay. All right. Then I
4 hear there's no disagreement as to that
5 representation.

6 MR. DADAY: That's correct, Judge.

7 MR. MAZIN: No, Judge.

8 THE COURT: So my thought is that we
9 first set the table and see where we are in terms of
10 stipulations with regard to a record. And let me
11 see if I can start it by asking some questions.
12 First of all, does everybody agree, everybody
13 meaning the three principals, that we're dealing
14 with the right to vote, and the right to vote is a
15 fundamental right?

16 Fundamental right meaning a term of
17 art; I'm not just being flip about it. Do we agree
18 that we're dealing with the right to vote is a
19 fundamental right? Any disagreement?

20 MR. DADAY: I haven't researched that,
21 Your Honor. I presume it is. It's statutory, so I
22 don't know the answer to that. Fundamental right,
23 actually, may involve other things that are out
24 there. So I don't know the answer to that.

25 THE COURT: Okay. All right.

1 MR. BONIN: No disagreement, Judge. I
2 mean, it's embedded in the state constitution.

3 THE COURT: Right. And toward that
4 end, Article I, Section 5 of the Pennsylvania
5 Constitution states, and I'm quoting: Elections
6 shall be free and equal; and no power, civil or
7 military, shall at any time interfere to prevent the
8 free exercise of the right of suffrage, close quote.

9 My sense is the right to vote is a
10 fundamental right. It's enshrined in our
11 Pennsylvania Constitution. Next is I understand we
12 have -- what? -- 260 ballots at issue. Right?

13 MR. DADAY: That is correct, Your
14 Honor.

15 THE COURT: 260 ballots are at issue.

16 MR. MAZIN: Your Honor, I believe it's
17 261 is the correct number.

18 THE COURT: 261. Okay. And do I
19 understand it, and I'm trying to set this, the
20 record, so that we can cut through a hearing and --
21 at least some parts of the hearing. So we have 261
22 ballots at issue. And is it 257 ballots where there
23 is no date on the outside envelope? Correct?

24 MR. DADAY: That is correct, Your
25 Honor.

1 THE COURT: 250 have no date on the
2 outside envelope, and we all agree the outside
3 envelope is the return envelope. The outside
4 envelope contains another envelope that contains the
5 actual ballot. We're in agreement?

6 MR. MAZIN: Yes, Judge.

7 MR. BONIN: Yes.

8 THE COURT: Okay. So there's no date.
9 And now we have four ballots that -- do I understand
10 it? -- the outside envelope are dated, but they're
11 dated in the wrong place. Is that correct?

12 MR. DADAY: That was my understanding,
13 Your Honor.

14 MR. BONIN: We're relying on the
15 representations of the board of elections as to
16 that.

17 THE COURT: Okay. And I'm just trying
18 to see if we avoid taking the witness and saying
19 that. If we can stipulate that that's what the
20 facts are, let's keep moving.

21 MR. MAZIN: Yes, Judge.

22 THE COURT: Fair? Okay. Okay. And
23 were all the ballots -- and I'm referring to the 261
24 ballots. I will refer to them as the ballots at
25 issue. All right. Were all the ballots at issue

1 received timely by the board of elections? We can
2 stipulate to that?

3 MR. DADAY: I believe it is. Yes, Your
4 Honor.

5 MR. MAZIN: Yes, Judge.

6 MR. BONIN: Yes, Judge.

7 THE COURT: Okay. Was the receipt date
8 of the ballot verifiable without the date filled in
9 by the elector? In other words, does the voter
10 registration office, the board of elections, have
11 the -- have and exercised the wherewithal whereby
12 they are able to put the receipt date on the -- on
13 each of these 261 ballots as they came in?

14 MR. BENYO: Yes, Your Honor.

15 THE COURT: All right. Let's swear Mr.
16 Benyo in.

17 **TIMOTHY BENYO**, having been called as a
18 witness, was duly sworn by the court reporter,
19 examined, and testified as follows:

20 THE COURT: And, sir, your name is?

21 THE WITNESS: Tim Benyo.

22 THE COURT: And, Mr. Benyo, you're
23 employed by the County of Lehigh?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: In what capacity?

1 THE WITNESS: I'm the chief clerk to
2 the Lehigh County Election Boards.

3 THE COURT: Okay. And you run that
4 office?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. So my next question
7 is, the Board stamps the envelope as it comes in,
8 and does the Board record that date in the SURE
9 system?

10 THE WITNESS: Your Honor, it's not
11 recorded in the SURE system, but it is time-stamped
12 on each of the envelopes.

13 THE COURT: Okay. So we have no
14 dispute as to when these ballots arrived in the
15 board of elections' office?

16 MR. DADAY: That's correct, Your Honor.

17 MR. BONIN: No dispute.

18 THE COURT: Okay. And all of these
19 ballots were received timely? That's not an issue?

20 MR. DADAY: That's not an issue, Your
21 Honor.

22 THE COURT: You all agree?

23 MR. MAZIN: Yes, Judge.

24 MR. BONIN: Agree, Judge.

25 THE COURT: Okay. Is there any

1 evidence that any of the electors of the ballots at
2 issue appeared at the poll to vote twice? Is there
3 any evidence of that?

4 MR. DADAY: I don't think that's an
5 issue in this action.

6 THE COURT: Okay.

7 MR. BONIN: We're not aware of any such
8 issue, Judge.

9 THE COURT: All right. Other than not
10 including the date or including it in the wrong
11 place, is there any evidence of fraud or misconduct
12 associated with the ballots at issue?

13 MR. DADAY: No, Your Honor.

14 MR. MAZIN: No, Judge.

15 MR. BONIN: No, Judge.

16 THE COURT: Is it fair to say then that
17 the sole issue before us is whether a ballot that
18 does not contain the date on the outer envelope or
19 the date was in the wrong place should invalidate
20 the ballot? That's the only issue before us?

21 MR. DADAY: Your Honor, I noted in my
22 memorandum of law we believe that there is a
23 procedural defect here. So that issue is out there.
24 So there's really two issues, the procedural and the
25 substantive issue.

1 THE COURT: Okay. So answer this on at
2 least the substantive issue. Is it fair to say the
3 sole issue is whether a ballot that does not contain
4 the date on the outer envelope or the date was in
5 the wrong place should invalidate the ballot? That
6 is the issue before us?

7 MR. DADAY: That is the issue, Your
8 Honor.

9 MR. MAZIN: Yes, Judge.

10 MR. BONIN: Yes, Judge.

11 THE COURT: All right. So let's get to
12 the procedural issue. Mr. Daday, you raised it in
13 your brief.

14 MR. DADAY: That's correct.

15 THE COURT: And, gentlemen, thank you
16 very much for the briefs. I did receive them in
17 time. It was a long night.

18 MR. BONIN: There was a football game.

19 THE COURT: I should have put a page
20 limit on the briefs. I neglected to do that, but it
21 was okay. So why don't you go ahead with that
22 procedural issue. There was no response to it, but
23 that's, I assume, because the briefs were filed
24 simultaneously.

25 MR. DADAY: Well, Your Honor, I think

1 it would behoove us to put Mr. Benyo on the stand
2 and have him testify to all this.

3 THE COURT: That's fine.

4 MR. DADAY: And then we could, when
5 we're done, argue whether or not the procedure is
6 correct.

7 THE COURT: Mr. Benyo, you're being
8 called as a witness.

9 THE DEPUTY: Excuse me, Judge, they
10 said they were having trouble hearing you.

11 COURT CRIER: Your mic is not working.
12 I don't know why.

13 MR. DADAY: Your Honor, I've already --

14 THE COURT: Hold on a minute. Yeah,
15 I'm told they cannot hear in the back. I can only
16 tell you that Judge Johnson had this courtroom
17 before I did this morning. No, I'm only kidding.
18 Linda, this is not working. Are those microphones
19 working?

20 COURT CRIER: Yes, they are. These are
21 all on, but yours isn't.

22 THE COURT: Those are on, but this is
23 not.

24 COURT CRIER: Yes.

25 THE COURT: I'll try to speak up. I

1 apologize. My microphone is not working. I
2 understand everybody else's is, and yeah. I'll try
3 to speak up. Mr. Daday.

4 MR. DADAY: Yes, Your Honor. I've
5 already pre-marked my exhibits as I think I do want
6 to add the one, which is kind of dangling here. So
7 may I approach the witness, Your Honor?

8 THE COURT: You may.

9 **DIRECT EXAMINATION**

10 **BY MR. DADAY:**

11 Q. Mr. Benyo, where do you live?

12 A. Jim Thorpe, Pennsylvania, sir.

13 Q. And what is your educational background?

14 A. Well, formally or informally?

15 Q. Formally.

16 A. Formally, I have a degree in IT.

17 Q. Okay. Informally?

18 A. Election -- election work by formally doing
19 it.

20 Q. Do you take any courses with regards to
21 election law or election proceedings?

22 A. They're not courses per se, anything formal,
23 but there are meetings and conferences where we
24 discuss different proceedings.

25 Q. Various seminars, I would assume. Is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. And where do you work currently?

4 A. The Lehigh County Election Office, Voter
5 Registration.

6 Q. Okay. And how long have you worked there?

7 A. Going on 12 years.

8 Q. And before that, where did you work?

9 A. Carbon County in the same position.

10 Q. Okay. And in your current position, what are
11 your duties and responsibilities?

12 A. Oversee the office for voter registration and
13 for the process of election.

14 Q. Yes. So you obviously know why we're here
15 today. Could you just give us a brief description
16 of this process, particularly as it relates to
17 mail-in ballots which is what we have going on right
18 now?

19 A. In counting mail-in ballots? In processing
20 them? I'm not sure.

21 Q. In processing. Actually, from the time that
22 you send them out. When somebody sends in an
23 application, presumably, you then send documents out
24 for them to fill out. Is that correct?

25 THE COURT: Are these -- is this

1 relevant?

2 MR. DADAY: I think it's just --

3 THE COURT: I thought the procedural
4 issue was whether Mr. Cohen has standing. Yes? No?

5 MR. DADAY: That's correct, but I was
6 -- I'm asking some questions I think that relate to
7 all this, and to get a better understanding of the
8 process of what actually happens when the mail-in
9 ballot is requested, then sent out, and it comes --

10 THE COURT: But I understand that's not
11 an issue. I thought we stipulated that none of that
12 is an issue. The only issue is the dating on the
13 ballots, and I'm assuming the ballots were sent out
14 properly according to law.

15 MR. DADAY: Correct.

16 THE COURT: They were filled out
17 according to law, except for the date issues.

18 MR. DADAY: Right.

19 THE COURT: And they were received in a
20 timely fashion according to law.

21 MR. DADAY: Right. But when they sent
22 out the mail in -- so when an application comes back
23 requesting the mail-in vote, the ballot, there is a
24 -- the mail-in ballot goes out with instructions.
25 And I'd like to, you know, get into that. That's

1 really kind of where I'm at.

2 THE COURT: Okay. Then let's get to
3 that.

4 BY MR. DADAY:

5 Q. Okay. Could you briefly describe that
6 process?

7 A. Sure. After the application is accepted, a
8 packet is sent to a voter. That packet includes a
9 secrecy envelope, includes a return envelope, the
10 exterior mailing envelope, and a set of
11 instructions.

12 Q. Okay. And what happens when you get the
13 ballot back?

14 A. We check the barcode that's associated with
15 that ballot and that voter to make sure that it
16 matches and it's a legitimate ballot. It's then
17 scanned into the SURE system, and then it is counted
18 on Election Day.

19 Q. Okay. What happens when a ballot is not
20 counted?

21 A. That would be set aside and it would be
22 canceled.

23 Q. It's what?

24 A. It's canceled.

25 Q. Okay.

1 A. Once we put it into the SURE system, it gets
2 canceled and then the voter is notified through the
3 SURE system of its cancellation.

4 Q. Okay. Okay. I'd ask you to turn your
5 attention to my Exhibit No. 1. Can you tell me what
6 that is?

7 A. Exhibit number --

8 MR. BONIN: Judge.

9 THE WITNESS: Exhibit No. 1 is a copy
10 of the return envelope that would be mailed back to
11 the office from the voter.

12 BY MR. DADAY:

13 Q. And could you tell me what --

14 MR. BONIN: Judge, objection.

15 THE COURT: Mr. Bonin.

16 MR. BONIN: I'm looking at Exhibit No.
17 1 here, assuming that includes the --

18 MR. DADAY: No, that's not Exhibit No.
19 1.

20 MR. BONIN: Oh, I'm sorry.

21 MR. DADAY: Exhibit No. 1 is the
22 November 2020 --

23 MR. BONIN: Oh, okay. I'm sorry,
24 Judge. I misunderstood what was being asked about.

25 BY MR. DADAY:

1 Q. Can you tell me what this exhibit is?

2 A. It's the return envelope that the mailer --

3 Q. And --

4 A. That would -- they -- a ballot would come in
5 when it's returned to the office.

6 Q. Is this the return envelope for the year
7 2020?

8 A. It is not.

9 Q. When is it from?

10 A. I'd have to compare it to the others, but it
11 is not from this year.

12 Q. It's not, right. This year is 2021, last
13 year during the presidential election, I believe
14 this is the ballot of the return that was returned
15 back?

16 A. This is similar to the ballots that we used
17 in 2020, yes. I'm not 100 percent sure, but it is
18 not used in 2020.

19 Q. Okay. I'd ask you to turn your attention to
20 Exhibit No. 2. Can you tell me what that is?

21 THE COURT: I was just confused by that
22 last response. I thought you said it was or was
23 not. Exhibit 1 is the 2020 ballot and not used in
24 2021?

25 THE WITNESS: Correct.

1 THE COURT: Okay.

2 THE WITNESS: Yes, sir.

3 BY MR. DADAY:

4 Q. Could you tell me -- Exhibit No. 2, can you
5 tell me what that is?

6 A. That is the ballot envelope that we used in
7 2021.

8 Q. Okay. Are there differences between the
9 ballots that were sent out in 2021 versus the
10 ballots that were sent out in 2020?

11 A. There are some design changes with 2021
12 having more information and more instruction.

13 Q. Okay. Could you tell us what those
14 instructions were that were added?

15 A. On the flap to the envelope, it says: Your
16 ballot must have the following to be counted: You
17 sign and date the voter declaration in your own
18 handwriting, and you seal your ballot inside the
19 white secrecy envelope marked Official Election
20 Ballot and place it in here.

21 Q. Okay. And that first phrase that you used,
22 your ballot must have the following to be counted,
23 is that bolded?

24 A. It is bolded and in larger font.

25 Q. Okay. And down at the bottom, the signature

1 block, is there anything different about that?

2 A. Yes. The word required is after voter, sign
3 or mark here.

4 Q. Why were these changes made to the ballot?

5 A. They were -- it was advice by the Department
6 of State that these changes were administered to the
7 2021 Election return ballot envelopes.

8 Q. Are you aware of any reason why they changed
9 -- they added these instructions?

10 A. I -- just a personal opinion. I don't
11 have -- I do not know why they actually did it. I
12 know I have heard why.

13 THE COURT: Well, we got hearsay, and
14 your personal opinion is not relevant. Is that
15 fair?

16 THE WITNESS: That is fair.

17 THE COURT: With all due respect.

18 THE WITNESS: Your Honor, thank you.

19 BY MR. DADAY:

20 Q. Did you have the opportunity to review these
21 changes with your solicitor?

22 A. I do not recall that if we spoke about the
23 specific changes.

24 Q. Okay. Did you speak to your solicitor about
25 any changes that were made with the ballot?

1 A. To the ballot design?

2 Q. That's correct.

3 A. I am not -- I don't know.

4 Q. Okay. You don't know. You don't recall.

5 Okay. I'd ask you to turn your attention to Exhibit
6 No. 3, and that is the card. I'd like to have the
7 card itself entered into the record.

8 MR. BONIN: Objection, Your Honor. The
9 card which counsel is presenting to the Court is not
10 the card that would have been included in the
11 general election ballots. We know this because it
12 says that your ballot must be received by May 18th,
13 2021. That was for the primary election. If we
14 have the part for the general election, I would have
15 no objection, but this is his --

16 MR. DADAY: I'm sorry. I probably gave
17 you the wrong one. It should be November 2nd.

18 MR. BONIN: Okay. Okay. Judge, I am
19 reviewing them both here, and it appears that there
20 is no substantive change other than the date on
21 these. So as, you know, a representative exhibit, I
22 withdraw my objection.

23 MR. DADAY: Thank you.

24 BY MR. DADAY:

25 Q. Can you briefly tell us when this instruction

1 document is sent out?

2 A. This is the instruction document that I
3 mentioned earlier that is placed within the packet
4 that is sent to the voter when their ballot is
5 mailed to them.

6 Q. And was this sent out in 2021?

7 A. Yes.

8 Q. And is it sent out to every elector or every
9 person that requests a mail-in ballot?

10 A. It should be. Yes. It should be in their
11 packet.

12 THE COURT: And when we say 2021, we're
13 limiting this to the general election. Correct?

14 MR. DADAY: That's correct. Yes.
15 Absolutely, Your Honor.

16 THE COURT: All right.
17 BY MR. DADAY:

18 Q. I'd ask you to take a look at Paragraph No. 2
19 or the numeric number 2. Can you tell us what that
20 says?

21 A. It says, sign and date the return envelope,
22 and then -- in larger font, and then underneath it
23 says, sign and write today's date in the Voter's
24 Declaration section.

25 Q. Okay. And about two-thirds of the way down

1 there, there's a block which is highlighted. Can
2 you tell me what that says? It begins with, if you
3 do not.

4 **A.** If you lose your ballot or mistake a ballot,
5 contact us right away.

6 **Q.** I'm sorry. There's one that is in a block.

7 **A.** Oh. If you do not follow these instructions,
8 your ballot will be rejected.

9 **Q.** Okay. There's also contact information at
10 the bottom of that instruction card. What is the
11 purpose of the information being put there?

12 **A.** That is the contact information for the
13 office.

14 **Q.** So if anybody has any questions, they can
15 just simply call?

16 **A.** Yes, sir.

17 **Q.** And get an answer. Okay. And now, it's my
18 understanding that both the November 2021 and the --
19 the ballot and this instruction card are also in
20 Spanish. Is that correct?

21 **A.** Yes, sir.

22 **Q.** Okay. Was there an issue throughout the
23 state with regards to voter registration offices not
24 counting or counting undated ballots, I should say;
25 counting undated ballots?

1 A. I cannot answer for the state, but I do not
2 believe so. Not in -- I'm not quite understanding
3 your question.

4 Q. Okay. Did you receive any guidance from the
5 Pennsylvania Department of State with regards to
6 undated ballots?

7 A. Yes, sir, we did.

8 Q. And I'd ask you to turn to Exhibit No. 4.
9 Can you tell me what that is?

10 A. That is an e-mail from the deputy secretary
11 of the Department of State.

12 Q. Okay. And what is the general purpose of
13 that message?

14 MR. BONIN: Objection, Your Honor. The
15 message says what it says.

16 MR. DADAY: Okay.

17 BY MR. DADAY:

18 Q. Could you read the second paragraph that
19 begins with as you know?

20 A. As you know, the department updated the
21 content and the instructions on the declaration
22 envelope to ensure that voters know they must sign
23 and date the envelope for their ballot to be
24 counted.

25 Q. Thank you. When did you receive that

1 message?

2 A. This e-mail is dated June 1st, 2021.

3 Q. Okay. Did you circulate that message to
4 legal counsel?

5 A. I believe we did discuss this. Yes.

6 Q. Okay. And did you receive any advice from
7 your legal counsel?

8 A. We agreed that this was how we would proceed.

9 Q. Okay. In the past, were you counting undated
10 ballots?

11 A. Only specific to the Supreme Court decision
12 at the 2020 Election.

13 Q. So after the November 2020 Election, you were
14 not counting the undated ballots. Is that correct?

15 A. Correct.

16 Q. Now, with regards to the undated ballots, was
17 that decision made for the 2021 Election? Is that
18 correct?

19 A. Yes, sir.

20 Q. Okay. Do you know -- were you involved in
21 that decision-making process?

22 A. With the Department of State, no. With legal
23 counsel, yes.

24 Q. With your legal counsel. Okay. Do you
25 recall when that occurred?

1 A. I don't. I don't know the date. No.

2 Q. Okay. For the primary election, did you
3 count the undated ballots?

4 A. I do not believe we did.

5 Q. Okay. Did you receive any objections from
6 the public with regards to counting undated ballots
7 at -- prior to the election date?

8 THE COURT: We're talking the primary
9 or the general?

10 MR. DADAY: I'm sorry. The general
11 election, Your Honor.

12 THE WITNESS: I don't remember any
13 specific conversations pertaining to undated ballots
14 with the public, but I would assume there would be
15 more than one complaint. There's complaints about
16 everything.

17 BY MR. DADAY:

18 Q. But you don't know of any?

19 A. I can't be specific on any.

20 Q. Okay. So what happened on Election Day? Did
21 you begin to count the votes or canvass the votes?
22 I guess that's a term, pre-canvass and canvass. Is
23 that correct?

24 A. Yes, it's two different terms.

25 Q. And what goes on in those two processes?

1 **A.** Pre-canvass is specific to mail ballots, both
2 absentee and mail-in. And then canvassing --
3 pre-canvass begins at 7:00 a.m. on -- can begin at
4 7:00 a.m. on Election Day. Canvassing is a
5 secondary process where once the supplies come back,
6 we can then go through them and make sure that we
7 have all the ballots and organize everything to --
8 leading up to the computation board on Friday at
9 9:00 a.m. after the election.

10 **Q.** Okay. So when were the mail-in ballots
11 canvassed?

12 **A.** During pre-canvass starting -- I believe we
13 started at 7:30, 7:45 on Election Day.

14 **Q.** Okay. And during that process, if a mail-in
15 ballot came in that was undated, what would you do
16 with it?

17 **A.** It would be set aside.

18 **Q.** Immediately?

19 **A.** As soon as we could get to it. Sure.

20 **Q.** Okay. Now during that process, were there
21 people, representatives of the Cohen campaign team
22 there along with other candidates and their
23 representatives?

24 **A.** I'm not sure what specific candidate they
25 represented, but both parties were there. Yes. And

1 Mr. Cohen, dad, was definitely there for some of it
2 as well as the candidate.

3 Q. Okay. And I believe there was a lady by the
4 name of Naomi who was there. Is that correct?

5 A. Correct.

6 Q. Do you recall if she was there for the entire
7 time?

8 A. Pretty much, yes, the entire time.

9 Q. Okay. So did you go over the 260 undated
10 ballots as they were coming in and being canvassed
11 with the representatives from those candidates?

12 A. On Election Day, no. At a later time, yes,
13 we did look at them together.

14 Q. When did that happen?

15 A. I believe it was the following Wednesday.
16 I'm not exactly sure the date, but it was past
17 Election Day.

18 Q. That would be the next day. Is that correct?

19 A. No. It was the --

20 Q. November 3rd.

21 A. -- following week, I believe.

22 Q. I'm sorry?

23 A. It was the following week. I don't think it
24 was the week of the election, it was the following
25 week.

1 Q. There was a -- my understanding is there was
2 a meeting on November 5th of the representatives
3 from the various candidates. Is that correct? You
4 held a meeting where there were objections that were
5 made or challenges that were made to the ballots.
6 Do you recall that?

7 A. Other than the election board meeting?

8 Q. That's correct. So for instance, I believe
9 Mr. Jarrett Coleman who made the objection initially
10 for the provisional ballots was present, and there
11 was a number of other representatives and candidates
12 who were there.

13 A. We didn't look at the provision. We don't
14 look at the provisionals until Friday.

15 Q. Right.

16 A. During the computation.

17 Q. I'm sorry. Friday, November 5th?

18 A. Okay.

19 Q. Right. So on Friday, November 5th, there was
20 a gathering of all the candidates, and I believe you
21 had requested that challenges be made at that time.
22 Is that correct?

23 A. I don't believe that's true.

24 Q. Okay. Can you tell us --

25 A. The timeline -- the timeline is off. Yeah,

1 during the whole process, the candidates'
2 representation and parties are welcome to be in the
3 area. We did go over with the parties and the
4 representatives different ballots that had a problem
5 with them.

6 It started on -- at 9:00 a.m. on that Friday
7 after the election and continues until we complete
8 the process. But I don't think it was on Friday
9 where we double-checked all the provisionals. It's
10 a much longer process than having everything done on
11 Friday at 9:00 a.m.

12 Q. I'm sorry. What?

13 A. It's a much longer process than having --
14 being able to have everything done at 9:00 a.m. on
15 Friday after the election.

16 Q. Sure. So as to the 260 ballots though, were
17 you advising or letting the parties and the
18 representatives know that those ballots were not
19 being counted?

20 A. I did. I did go through the different
21 categories of ballots that were not going to be
22 counted, but those were not the provisionals. Those
23 were the mail ballots.

24 Q. That's correct. The mail-in ballots.
25 Correct?

1 A. Yes, yes.

2 Q. And when did that occur?

3 A. When we conducted the computation board
4 meeting on Friday at 9:00 a.m.

5 Q. Was that Friday, November 5th?

6 A. Yes. That makes sense. Yes.

7 Q. Okay. Did anybody make any objections to
8 those 260 undated ballots?

9 A. No.

10 MR. BONIN: Objection. Relevance.
11 Judge, if I may be heard on this briefly.

12 THE COURT: Go ahead.

13 MR. BONIN: My understanding of the
14 basis of counsel's, you know, procedural objection
15 is that we did not timely object to a decision of
16 the board of elections. Nothing that's being
17 discussed here has anything to do with any decision
18 that was made by the board of elections.

19 THE COURT: I take it's conversations
20 Mr. Benyo had with the various political interests;
21 informal, casual discussions. There's nothing
22 statutory about that, is there?

23 MR. BONIN: No, Judge.

24 MR. DADAY: No.

25 THE COURT: So --

1 MR. BONIN: I thought we were here to
2 discuss the procedural defect issue. And I guess
3 I'm not sure what the relevance of a lot of this is
4 at this point, but --

5 THE COURT: Mr. Daday.

6 MR. DADAY: The relevance is that
7 because he didn't follow one of the four statutory
8 mechanisms for challenging these votes, the board of
9 elections had really no authority to act on.

10 THE COURT: Well, so isn't that the
11 only question to ask him? Do we need to have the
12 testimony about all this intermural stuff between
13 Mr. Benyo and the people who were at the
14 courthouse -- at the voter registration office if
15 nothing is statutorily required? I mean, the issue
16 -- I think what I hear you saying is that Mr. Cohen
17 failed to follow the statute with regard to filing
18 his objections to these ballots.

19 MR. DADAY: That's correct, Your Honor.

20 THE COURT: Okay. And I think I agree
21 with Mr. Bonin, if I'm following it correctly, and
22 that is, these are informal discussions; they had no
23 legal effect other than just alerting Mr. Cohen and
24 his people that we're not going to count these
25 undated ballots, just so you know that. But that's

1 his decision and not the Board's. Is that accurate?

2 MR. DADAY: That is accurate.

3 Absolutely. But there was a meeting.

4 THE COURT: So what's the import of
5 this testimony?

6 MR. DADAY: Well, the import is that on
7 November 5th there was a meeting where the various
8 representatives were there and challenges were made
9 to the various ballots that were deemed to not be
10 counted as part of the process.

11 THE COURT: Pardon me? You corrected
12 yourself and I missed it. Mr. Ritter leaned over,
13 and then you said something else.

14 MR. DADAY: Right. The 260 ballots
15 were not objected to by the Cohen team at the
16 November 5th meeting that was held.

17 THE COURT: And statutorily, were they
18 required to be objected to at that time?

19 MR. DADAY: No.

20 THE COURT: Then why are we here on it?
21 Then why is that relevant?

22 MR. DADAY: Because my contention is
23 there was never a point in this process where they
24 objected to the 260 ballots.

25 THE COURT: When was he supposed to

1 have objected?

2 MR. DADAY: He should have filed an
3 appeal with the court of common pleas, and that did
4 not happen.

5 MR. BONIN: Judge.

6 MR. DADAY: Or he should have filed an
7 action -- a petition with the court of common pleas,
8 I should say.

9 MR. BONIN: And, Judge, to be clear,
10 our position is that no one was required to file an
11 appeal before the court of common pleas until the
12 board of elections made a decision as to these
13 ballots. The board of elections didn't make a
14 decision as to these ballots until the board of
15 elections met on Monday, November 5th -- 15th.

16 THE COURT: And then he has two days to
17 file the appeal.

18 MR. BONIN: Whoever did not prevail
19 would have had two days to file.

20 THE COURT: Yeah. But the time limit
21 is two days after that decision by the board of
22 elections.

23 MR. BONIN: Exactly. Whatever
24 Mr. Benyo and his staff had decided is not the board
25 of elections.

1 THE COURT: Right. Do you disagree
2 with that, that Mr. Cohen had no obligation to file
3 any challenge until two days after the board of
4 elections took official act? You agree with that?
5 Isn't that -- isn't that what's required in the
6 election law?

7 MR. DADAY: My understanding of the
8 election law is that he had -- his obligation was to
9 file this matter before the court of common pleas,
10 not with the board of elections. When he filed it
11 with the board of elections, his filing -- well,
12 actually, he didn't even file anything with the
13 board of elections. There was no petition that was
14 filed with them. There were no electors that signed
15 verifications.

16 THE COURT: Okay.

17 MR. DADAY: There was no -- nothing.
18 And that's -- it was simply a -- we received a
19 notice from Mr. Benyo that there was going to be an
20 issue with the 260 ballots, and it didn't come up
21 until there was a hearing that we had on provisional
22 ballots that they brought in the 260.

23 THE COURT: So if I understand your
24 position, and correct me if I'm wrong. If I
25 understand your position is that informal

1 discussions on Friday, November the 5th alerted
2 Mr. Cohen's campaign that the voter registration
3 office was not going to count undated ballots and
4 that no action was taken by Mr. Cohen or his
5 campaign before the board of elections, this formal
6 decision. Is that your position?

7 MR. DADAY: The 260 ballots was never
8 raised at the November 5th meeting.

9 THE COURT: Well, now Mr. Benyo
10 testified they were. He said that there was
11 informal -- if I heard him correctly, there was
12 informal discussion at the November 5th meeting to
13 the effect that they were not going to count the
14 undated ballots.

15 MR. BONIN: And, Judge, I just want to
16 be clear.

17 THE COURT: Isn't that what you're
18 saying?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: That's what he said.

21 MR. BONIN: Yeah. And this, you know,
22 meeting was not a meeting of the board of elections.

23 THE COURT: I understand that. But I
24 think I'm not sure what the point is. I think
25 Mr. Daday is trying to get maybe that Mr. Cohen was

1 on notice that the board -- that his office, not the
2 board of elections, that his office was not -- was
3 intending not to count those 261 ballots because of
4 the date problem. Now that --

5 MR. BONIN: Yeah, that's correct. We
6 were on notice.

7 THE COURT: My question is, was there
8 any obligation once he was put on notice then to
9 have done something? And I think Mr. Daday's point
10 is, well, he didn't do anything until the board of
11 elections.

12 MR. BONIN: That's absolutely correct.
13 We did not do anything until the board of elections
14 met.

15 THE COURT: And your position is he
16 didn't have to.

17 MR. BONIN: Exactly, Judge. Right.

18 MR. DADAY. There was never -- he has
19 not followed any one of the procedures that is set
20 forth in the act. If he wanted to contest those
21 ballots, he should have filed an appeal with the
22 court of common pleas. If he was going to do
23 something with the board of elections, he should
24 have filed a petition with them that included the
25 three verifications and --

1 THE COURT: But Mr. Ritter filed the
2 appeal from the board elections.

3 MR. DADAY: I'm sorry. What?

4 THE COURT: Mr. Ritter filed the
5 appeal --

6 MR. DADAY: That's correct.

7 THE COURT: -- from the board of
8 elections.

9 MR. DADAY: That's correct. Because --

10 THE COURT: So -- go ahead.

11 MR. DADAY: Unfortunately, the board of
12 elections took that issue and decided on it. They
13 shouldn't have even taken that issue because there
14 was really nothing before them.

15 MR. BONIN: I really don't understand
16 counsel's contention, Judge. They're talking about,
17 you know, this three petitioner statute. That would
18 be if we were requesting a recount. A recount
19 recounts the ballots that have already been opened.
20 That wasn't the situation here.

21 What we have is the situation in which
22 Mr. Benyo has indicated that these ballots were not
23 being counted. I asked Mr. Benyo during the week
24 before if we would like to raise this as an issue
25 directly before the Board, when can we do so?

1 Mr. Benyo indicated to me that he would put it on
2 the agenda for the Monday, November 15th meeting of
3 the Board.

4 That's when we presented the issue.
5 And as opposing counsel has acknowledged, they had
6 notice that this issue was going to be debated
7 there. They were present there. They made
8 arguments there. So all of their arguments about
9 notice or process are just not founded, Judge.

10 THE COURT: Okay. So last night after
11 10 o'clock, I got the transcript of proceedings
12 before the Board. I have not read it.

13 MR. DADAY: Okay.

14 THE COURT: Okay. So I'm at a loss.
15 But are you telling me that within this transcript,
16 there is discussion before the Board about counting
17 or not counting these 261 ballots?

18 MR. DADAY: Yes, Your Honor. Attorney
19 Mazin brought it up at the hearing, and --

20 THE COURT: Okay. And so the Board
21 makes its decision. And as I understand the
22 election law, anyone who's dissatisfied with that
23 decision of the Board, not of Mr. Benyo but of the
24 Board, has two days to file an appeal to common
25 pleas. Right?

1 MR. DADAY: Wrong.

2 THE COURT: Okay.

3 MR. DADAY: In this matter, this was
4 not something that should have been brought before
5 the board of elections at the time. This is not a
6 matter that should have come before that.

7 THE COURT: Okay. So that's your
8 position.

9 MR. DADAY: Sorry?

10 THE COURT: So that's your position.

11 MR. DADAY: Exactly.

12 THE COURT: The problem is the Board
13 had no jurisdiction over this issue.

14 MR. DADAY: That's correct. Exactly.
15 In fact, if you read the --

16 THE COURT: Is that an administrative
17 code issue?

18 MR. DADAY: It's the election code
19 issue.

20 THE COURT: What governs that?

21 MR. DADAY: It's the election code,
22 Your Honor.

23 THE COURT: Okay.

24 MR. DADAY: In order to challenge a
25 ballot, there's only one method. There's only one

1 reason to challenge a ballot, and that is to
2 determine whether or not the elector is a qualified
3 elector in that county.

4 THE COURT: Well, you've stipulated to
5 that.

6 MR. BONIN: Judge, this matter doesn't
7 involve challenge electors or challenge ballots.

8 THE COURT: You stipulated to that.

9 MR. DADAY: That's correct. But to go
10 before the board of elections, that would have been
11 the only method of challenging it. There's no
12 method for this matter to have been before the board
13 of elections.

14 THE COURT: Okay. I think I understand
15 your position.

16 MR. DADAY: Right.

17 THE COURT: Any other questions of
18 Mr. Benyo?

19 MR. DADAY: If I could just read my
20 notes, Your Honor, give me a few minutes here.

21 BY MR. DADAY:

22 Q. When a ballot is deemed to be set aside, is
23 it -- do you make that decision alone?

24 A. I would have the final decision. Sure.

25 Q. Okay. So does the Board ever get involved in

1 overriding your decision?

2 A. Not normally.

3 Q. Okay. So right. Okay. Because there's lots
4 of other ballots that were disqualified?

5 A. Correct.

6 Q. And they're not involved in that process. Is
7 that correct?

8 A. Correct.

9 Q. When did the Cohen team express their
10 objections to the 260 ballots?

11 MR. BONIN: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I would say the meeting
14 of the election board, there was talk previously
15 about those ballots, but I don't remember them ever
16 saying they were objecting to any particular
17 ballots.

18 BY MR. DADAY:

19 Q. And what was the purpose of that meeting?

20 A. Which meeting?

21 Q. The one that was held I believe on
22 November 15th. It was that Monday a week ago.

23 A. That was the provisional ballot meeting, I
24 believe.

25 Q. And how many ballots were involved in that?

1 A. In the provisional ballots? Twenty-one.

2 Q. Okay. And at the time that the meeting was
3 set, there was really no discussion about any other
4 challenges to those ballots. Is that correct?

5 A. I made the Board aware that the Cohen team
6 had looked at those ballots, that something may come
7 up.

8 Q. Okay. At the time, what was the difference
9 between Mr. Ritter's vote total and Mr. Cohen's vote
10 total?

11 A. Seventy-four.

12 Q. Okay. And Mr. Ritter was ahead. Is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. When a challenge is made to a ballot,
16 is there supposed to be a deposit made with the
17 board of elections?

18 MR. BONIN: Objection. Relevance.

19 THE COURT: What was the question?
20 When is a challenge what before the board of
21 elections?

22 MR. DADAY: So when a challenge is
23 made, the statute requires that there be a deposit
24 of \$10 per, I believe it's per ballot --

25 THE COURT: Oh, a deposit. Okay.

1 MR. BONIN: I renew my objection. This
2 case has nothing to do with challenged ballots, this
3 is about trying to include ballots.

4 THE COURT: Overruled. You may answer
5 the question.

6 THE WITNESS: Can you be more specific
7 on what section you're speaking of?

8 BY MR. DADAY:

9 Q. Okay. It's 3146.8.

10 A. And is it in reference to challenges at the
11 polling place?

12 Q. No.

13 THE COURT: Do you have the statute?
14 Can you give it to Mr. Benyo?

15 MR. DADAY: Section (f) states: Any
16 person challenging an application for a ballot, an
17 absentee ballot, an application for a mail-in
18 ballot, or a mail-in ballot for any reasons provided
19 in this act shall deposit the sum of \$10 in cash
20 with the county board.

21 MR. BONIN: Judge, I renew my
22 objection. This is about challenging ballots. No
23 one is -- was challenging ballots.

24 THE COURT: This is challenging the
25 application for a ballot?

1 MR. DADAY: No. It's the challenge --
2 they made the challenge to the mail-in ballot.
3 They're saying that the ballot should be counted.

4 THE COURT: All right. Well, let's get
5 the evidence on the record. I'll make a ruling.

6 BY MR. DADAY:

7 Q. Okay. Did they make a deposit of \$10 per
8 ballot?

9 A. No, sir.

10 MR. DADAY: I'd like to move my
11 exhibits into evidence.

12 THE COURT: Any objection?

13 MR. DADAY: I also have the transcript
14 too. I believe you have that. So I think that
15 should be part of the record.

16 THE COURT: Let's mark it. Plaintiff's
17 Exhibit next in number which would be, what? Four?
18 Five?

19 MR. DADAY: Five.

20 THE COURT: Any objection?

21 MR. BONIN: No objection, Judge.

22 THE COURT: Plaintiff's Exhibits 1
23 through 5 will be admitted without objection.

24 (Whereupon, Exhibits No. 1, 2, 3, 4,
25 and 5, respectively, were moved and admitted into

1 evidence.)

2 THE COURT: With that, Mr. Daday.

3 MR. DADAY: I'm sorry, Your Honor.

4 THE COURT: With that, any other
5 questions of Mr. Benyo?

6 MR. DADAY: I have no other questions,
7 Your Honor.

8 THE COURT: Okay. Mr. Mazin, any
9 questions of Mr. Benyo?

10 MR. MAZIN: Just a few questions.

11 **CROSS-EXAMINATION**

12 **BY MR. MAZIN:**

13 Q. Do you know how many mail-in ballots the
14 county received for the November 2nd, 2021 Election
15 approximately?

16 A. Approximately 22,000.

17 Q. Okay. Were any of the ballots that were
18 received, the mail-in ballots, were any of them
19 opened from the secrecy or outer envelopes?

20 A. Of the 22,000?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. Once the Board made its decision that
24 the ballots at issue should count, were those
25 ballots separated from all the other mail-in

1 ballots?

2 A. Yes. They were separated prior to, and then
3 the specific 261 were also separated from the other
4 categories that were not being counted.

5 Q. And why were they separated?

6 A. Because those were specifically in question
7 by the Cohen team.

8 MR. MAZIN: It's all the questions I
9 have.

10 THE COURT: And for the benefit of the
11 public, can we agree that those ballots have not yet
12 be opened?

13 THE WITNESS: Your Honor, the exterior
14 envelope was opened. Nothing was removed or
15 separated from the original mailing envelope.

16 THE COURT: So the ballots themselves
17 have not been disclosed and we don't know how people
18 voted in those 261 envelopes?

19 THE WITNESS: You are correct. Yes,
20 Your Honor.

21 THE COURT: Okay.

22 MR. MAZIN: That's all I have, Judge.

23 THE COURT: Mr. Bonin.

24 MR. BONIN: Sure.

25 CROSS-EXAMINATION

1 BY MR. BONIN:

2 Q. Mr. Benyo, prior to the November 15th meeting
3 of the board of elections, had the board of
4 elections at any point earlier this year made any
5 decisions with regards to the handling of undated
6 ballots?

7 A. I do not believe so. No.

8 Q. Okay. So this was previously a decision that
9 you had made on your own after consulting with
10 counsel?

11 A. Yes, sir.

12 Q. Okay. We previously discussed -- I just want
13 to have a full understanding of the ballot packet
14 which is sent out to mail-in voters. You had
15 previously indicated that the security envelope --
16 the ballot itself was included, the security
17 envelope was included, and this two-sided card was
18 included in the packet. Is that correct?

19 A. Yes, sir.

20 Q. Were there any other materials in that
21 packet?

22 A. The return envelope.

23 Q. Okay.

24 A. And the exterior envelope.

25 Q. Okay. Are there any other instructions,

1 explanations, forms regarding local initiative,
2 anything of that, sir?

3 A. Well, yes, depending on the district, there
4 was plain English statements included in the mail --
5 a portion of the mail ballots.

6 Q. Okay. Then how lengthy would those inserts
7 have been?

8 A. It was two of the districts were one sided, I
9 believe, and one -- the City of Allentown's was two
10 sided.

11 Q. Okay. And --

12 A. Single sheet of letter paper.

13 Q. Okay. And the Allentown insert concerned
14 what?

15 A. The two referendum questions that were on the
16 ballot.

17 Q. Okay. Are the packets assembled in any
18 particular order in terms of what goes in where
19 within the envelope?

20 A. I don't know if our order was the same as the
21 mailing house that we contract to do the first
22 initial -- the first three initial mailings. I
23 don't know.

24 Q. Okay.

25 A. But yes, there's an assembly line, so they

1 were in some specific order. I do not know the
2 order.

3 Q. So you don't know if this instruction card
4 was on top of everything else, behind everything
5 else, or what?

6 A. I couldn't -- we can look. I have examples
7 in my briefcase.

8 Q. I don't believe that's necessary at this
9 time. I guess the other question, I just want to
10 turn your attention back to Exhibits 1 and 2, which
11 have been previously moved into evidence. Exhibit 1
12 was the 2020 declaration envelope. What I notice
13 from this copy is that there was no envelope flap on
14 here. Was there on the physical envelopes which
15 went out for the 2020 General Election, if you
16 remember?

17 A. I don't know off the top of my head.

18 Q. Okay. Let me see.

19 A. I can look at the samples from the printer.

20 MR. DADAY: Just for the record, I do
21 have the sample -- an actual, so if you'd like that.

22 THE WITNESS: Those are for 2021, I
23 believe. Oh.

24 BY MR. BONIN:

25 Q. And just so I and the Court understand how

1 these ballots are reviewed, when they come in prior
2 to or on Election Day -- because that's when they
3 have to come in to be counted. Correct?

4 A. Correct.

5 Q. And when they arrive at the board of
6 elections, are they reviewed at that time as to the
7 sufficiency of that outer declaration envelope?

8 A. They are.

9 Q. Is any notice provided to voters if their
10 declaration envelopes are insufficient?

11 A. There is.

12 Q. And how is that notice provided?

13 A. Once -- once the envelope is processed
14 through the SURE system, they are notified either by
15 e-mail or -- e-mail, mail, or text.

16 Q. Okay.

17 A. That something happened to their ballot.

18 Q. Okay. And did those notices go out during
19 this election cycle, as far as you know?

20 A. As far as I know, yes.

21 Q. Did any voters -- and did voters have an
22 opportunity to cure those defects prior to or on
23 Election Day?

24 A. Certain defects, yes.

25 Q. Was the date defect one of them?

1 A. Yes, it was.

2 Q. Did any voters come in to cure that defect?

3 A. They did.

4 Q. Do you know how many?

5 A. I do not.

6 Q. You don't. Okay. Do you know if it was --
7 can you -- was it many voters? Was it a handful? I
8 mean, as best as you recall.

9 A. I don't know.

10 Q. Okay. Okay. With regards to the
11 November 15th board of elections meeting, and when
12 you became aware that this issue of the undated
13 envelopes was one that the Cohen campaign was
14 interested in, did you provide notice to other
15 candidates or their representatives that this issue
16 was going to come up in the November 15th meeting?

17 A. I'm not 100 percent sure. I'd have to look
18 at my e-mails. The Board was notified, and I do not
19 remember if the candidates were included. If one
20 was, then both were.

21 Q. Okay. Okay.

22 MR. BONIN: Judge, I have no further
23 questions.

24 THE COURT: Any redirect, Mr. Daday?

25 REDIRECT EXAMINATION

1 BY MR. DADAY:

2 Q. Mr. Benyo, when was the Ritter campaign
3 notified about the issue with the undated ballots
4 and the objection by --

5 A. I don't know the date.

6 Q. Do you recall doing it?

7 A. I've sent -- I send lots of e-mails. I do
8 not recall.

9 Q. Okay.

10 MR. BONIN: Brief.

11 THE COURT: Mr. Marzin -- Mr. Mazin,
12 I'm sorry. Mr. Mazin, any questions?

13 MR. MAZIN: No, Judge.

14 THE COURT: Mr. Bonin.

15 **RECROSS-EXAMINATION**

16 BY MR. BONIN:

17 Q. Was there a campaign present at the
18 November 15th meeting?

19 A. Yes, sir.

20 Q. Did they make argument at that meeting with
21 regards -- legal argument with regard to how the
22 undated ballots should be handled?

23 A. Yes, sir.

24 MR. BONIN: No further questions,
25 Judge.

1 THE COURT: May Mr. Benyo step down?

2 MR. DADAY: I'd like to ask --

3 THE COURT: Go ahead.

4 **FURTHER REDIRECT**

5 **BY MR. DADAY:**

6 Q. Did you send out any notice to the Ritter
7 campaign about the objections that were filed or the
8 challenges that were made by the Cohen campaign?

9 A. There were no challenges or objections.

10 Q. So there was nothing in writing that was
11 presented to the -- to your office?

12 A. No, sir.

13 Q. Okay.

14 THE COURT: That's it. Mr. Benyo, you
15 may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Thank you, sir. Mr. Daday,
18 any other witnesses or evidence with regard to the
19 procedural matter or, for that matter, the
20 substantive matter? We'll take it both at once.

21 MR. DADAY: I have nothing else, Your
22 Honor. I'd just like to move my -- I think we did.

23 THE COURT: I think we did, and I
24 admitted them without objection. Mr. Mazin, you
25 have any witnesses or evidence?

1 MR. MAZIN: No, Judge.

2 THE COURT: Mr. Bonin.

3 MR. BONIN: We have at least one, and I
4 don't know if other electors present in the
5 courtroom today who were voters of the undated
6 ballots and would like to discuss their ballot
7 experience, if it would be helpful for the Court.

8 THE COURT: And the purpose of that
9 would be to demonstrate what?

10 MR. BONIN: To demonstrate that voters
11 were, in fact, confused or not properly directed by
12 the ballot design, that they intended to cast
13 legally valid ballots, that they made every effort
14 to do so, and that they would like their -- that
15 their ballots were timely voted, and that they would
16 like their ballots to be counted.

17 THE COURT: You may call that witness.

18 MR. DADAY: Your Honor, I would object
19 to those witnesses. That has absolutely no
20 relevance to the fact whether or not -- if their
21 ballots were undated, they were undated. It speaks
22 for itself.

23 THE COURT: Well, that's one argument.
24 But I think there's case law that may require that
25 we look at whether it was -- whether it was a

1 confused directive or confusing directive or not.
2 So I'm going to take the witness, for whatever it's
3 worth.

4 MR. BONIN: We'd like to call Richard
5 Richards to the stand.

6 THE COURT: Mr. Richards.

7 **RICHARD RICHARDS**, having been called as
8 a witness, was duly sworn by the court reporter,
9 examined, and testified as follows:

10 THE COURT: Mr. Bonin.

11 MR. BONIN: Okay.

12 **DIRECT EXAMINATION**

13 **BY MR. BONIN:**

14 Q. Could you please identify yourself for the
15 record?

16 A. Richard Richards is my name.

17 Q. And where do you live, sir?

18 A. In Allentown.

19 Q. Are you a registered voter?

20 A. Yes.

21 Q. And for how long have you been a registered
22 voter?

23 A. I'm not sure exact, but most of my life.

24 Q. Okay.

25 A. Since I'm allowed to. Yeah.

1 Q. Okay. And do you regularly vote in
2 elections?

3 A. Yes.

4 Q. In the past few years have you -- by what
5 method or methods have you voted?

6 A. Write-in ballot.

7 Q. And by write-in ballot, you mean -- do you
8 mean --

9 A. Through the mail. Mail ballot, yeah.

10 Q. Okay. So you have not been voting in person,
11 you've been voting by mail?

12 A. That is correct.

13 Q. And did you -- did you apply to vote by mail
14 for the November General Election?

15 A. Yes.

16 Q. Did you receive a mail-in ballot for the
17 November General Election?

18 A. Yes.

19 Q. Do you recall around when you received it?

20 A. October -- I'm not 100 percent sure.

21 Q. Okay. And when you received the ballot
22 materials, what did you do with them?

23 A. I went upstairs at my desk and read over
24 everything and filled it out right away and mailed
25 it the next day.

1 Q. Okay. And when you say filled it out right
2 away, I just want to be clear about what the it is.
3 What did you fill out?

4 A. The ballot. I filled out the ballot. I read
5 through it, you know, and tried to make an
6 intelligent decision on each candidate and then
7 voted.

8 Q. Okay. And then what did you do with your
9 ballot once you had completed it?

10 A. I signed it -- well, I thought I signed it.
11 I signed it, and I thought I dated it right. And
12 then I put it in the security envelope. And I
13 thought I signed and dated that correctly, but --

14 Q. Okay.

15 A. -- obviously, I didn't. And then I put it in
16 the regular mail envelope, and then I mailed it.

17 Q. Okay. I just want to be clear on some of --
18 when you say that you signed it, are you referring
19 to your ballot itself or the declaration envelope?

20 A. Definitely the envelope. As far as the
21 ballot goes, I -- I'm not 100 percent sure. But I
22 think I did, yes.

23 Q. Okay. And do you recall whether -- do you
24 recall whether you put a date on that envelope?

25 A. I thought I did. Yes.

1 Q. Okay. Do you -- do you have any problems
2 generally reading and understanding instructions in
3 English?

4 A. No.

5 Q. Okay.

6 A. I might take -- I might spend extra time,
7 which I did with this ballot, spend time, extra time
8 reading it so I wouldn't get it wrong. But I did
9 get it wrong, obviously, so --

10 Q. Okay.

11 A. And I apologize for that.

12 Q. Okay. After -- no need to apologize. After
13 you cast, and then how did you have your ballot
14 delivered to the board of elections?

15 A. The nearest mailbox to my house, which is on
16 Downyflake Lane in Allentown, right off of Lehigh
17 Street.

18 Q. Okay. And after you cast your ballot, did
19 you receive any communications from the board of
20 elections indicating that there was any problem with
21 your ballot?

22 A. I got an e-mail saying everything, they got
23 my ballot, and everything was okay.

24 Q. So the communications that you received said
25 that your ballot was going to be counted?

1 A. Yes.

2 MR. BONIN: I have no further
3 questions, Judge.

4 THE COURT: Mr. Daday.

5 **CROSS-EXAMINATION**

6 **BY MR. DADAY:**

7 Q. Do you have a copy of that e-mail?

8 A. No, I erased it. I erased -- my trash thing
9 was so full, I erased the whole thing and, yeah, I
10 erased it. So I don't have it. No.

11 THE COURT: Any other questions?
12 Mr. Mazin.

13 **CROSS-EXAMINATION**

14 **BY MR. MAZIN:**

15 Q. Did you receive -- how many e-mails did you
16 receive from the county regarding your ballot?

17 A. One.

18 Q. Just one.

19 A. Yeah.

20 Q. Okay.

21 MR. MAZIN: That's all I have, Judge.

22 THE COURT: Any redirect?

23 MR. BONIN: No, Judge.

24 THE COURT: Mr. Richards, you may step
25 down. Thank you, sir.

1 THE WITNESS: Thank you.

2 THE COURT: Any other witnesses or
3 evidence, Mr. Bonin?

4 MR. BONIN: I don't believe. We had
5 talked to a number of voters. They're not here,
6 Judge, so --

7 THE COURT: Okay.

8 MR. BONIN: We have no other witnesses.
9 Obviously, we'd like to offer argument both on the
10 procedural and the substantive points.

11 THE COURT: I will give you that
12 opportunity. Mr. Daday, any rebuttal?

13 MR. DADAY: Nothing.

14 THE COURT: Okay. I assume that
15 completes the evidentiary portion of the hearing.
16 So let's have, without objection then, let's proceed
17 to oral argument. Mr. Daday, would you like to go
18 first on behalf of Mr. Ritter?

19 MR. DADAY: Thank you, Your Honor.
20 Your Honor, thank you for giving us the opportunity
21 here to present these important cases. This is --
22 have potentially some large effects throughout the
23 Commonwealth, and it's a great opportunity to get
24 out all the issues. Okay. Yes.

25 The first, with regards to the first

1 issue, Your Honor, we believe that Mr. Cohen's
2 challenge to the 260 undated ballots is fatally
3 defective. As I indicated in my brief, the Rinaldi
4 case goes through, in great detail, the process that
5 you have to follow in order to challenge the
6 election votes.

7 First, a request must be made to the
8 board of election for a recount, which may be made
9 pursuant to 25 P.S. Section 3154. The second method
10 is pursuant to 3157(a) which provides for an appeal
11 to the court by any person aggrieved by any order or
12 decision of the county board regarding the
13 computation or the canvassing of the returns. An
14 appeal must be filed within two days of the order of
15 the decisions.

16 Third, a request may be made to common
17 pleas court for a recount or a re-canvass for votes
18 which appear to be fraud or with an error. Such a
19 request must be made within five days after the
20 completion of the Board's computation and, most
21 importantly, they must have a petition which is
22 verified by three qualified electors and accompanied
23 by a cash deposit.

24 With regards to 3154 which is the first
25 one, the request to the board of elections, they

1 also must have a verified affidavit that is
2 presented by three voters of that district. Lastly,
3 if the returns have been officially certified, the
4 only manner in which the complainant may challenge
5 the election result is a petition to the court of
6 common pleas.

7 The Cohen campaign failed to proceed or
8 utilize either -- any of those statutorily
9 prescribed procedures to raise his objections to the
10 260 ballots. The Rinaldi case discussed the defects
11 that were a part of that case, and defects which
12 were very similar to the ones in this -- in the
13 current case.

14 In Rinaldi, the candidate was a
15 candidate for the counsel for the bureau of Old
16 Forge in Lackawanna County. They had filed a
17 petition requesting the Court of Common Pleas of
18 Lackawanna County to count 111 write-in votes. The
19 court of common pleas convened a two-judge panel,
20 which served as both the board of elections as well
21 as the court, to hear arguments.

22 At that argument, the counsel for the
23 Republican Party made objections to the process
24 stating that the petition failed to identify the
25 provision of the election code; and, furthermore,

1 that the candidates requesting relief did not comply
2 with the requirements of the Code. In that case,
3 the common pleas court granted the candidate's
4 petition but did not deal with the defects in the
5 procedural portion of the case.

6 The Rinaldi case is really important
7 because they stated in that case that a jurisdiction
8 to resolve election disputes is not of common law
9 origin but is founded entirely upon the statute and
10 cannot be extended beyond limits defined by the
11 General Assembly. Hence, the statutory provision
12 set forth at length constitute the exclusive means
13 for challenging the accuracy of the election
14 results.

15 This is really important because this
16 means that the election code is a statutory
17 proceeding. It is the exclusive method for
18 challenging election results. That there was
19 nothing -- the Cohen campaign failed to proceed with
20 any of those statutory listed remedies in order to
21 challenge the ballots.

22 In Rinaldi, the candidate's petition
23 was actually addressed to the board of elections
24 rather than the court of common pleas. So the
25 Commonwealth Court considered that petition to be a

1 request for a recount pursuant to 3154(e). In that,
2 the petition to the board of elections, it failed to
3 contain the proper number of elector verifications
4 and the form of those verifications.

5 The Commonwealth Court ruled that
6 because they had failed to meet those basic
7 requirements, that Rinaldi's petition was fatally
8 ineffective. Mr. Cohen's challenges to the
9 defective mail-in ballots at issue were also
10 procedurally improper. At the hearing, counsel for
11 Mr. Cohen verbally objected to the undated mail-in
12 ballots.

13 Mr. Cohen's challenge failed to conform
14 to any of those specifically provided procedures set
15 forth in the act for challenging the accuracy of the
16 vote. Furthermore, Section 3146.8 requires that the
17 person challenging the application for an absentee
18 ballot shall deposit the sum of \$10 with the county
19 board of elections to challenge those ballots.

20 THE COURT: Let me interrupt you.
21 We're not dealing with absentee ballots. Right?
22 We're dealing with mail-ins.

23 MR. DADAY: Right, mail-ins. I'm
24 sorry.

25 THE COURT: Right?

1 MR. DADAY: Right, yes, it is mail-in.

2 THE COURT: We agree on that?

3 MR. DADAY: Absolutely, yes.

4 THE COURT: But we do agree that the
5 statutory language with regarding to signing and
6 dating are the same for absentee and mail-ins.
7 Correct?

8 MR. DADAY: I believe so. Yes.

9 MR. BONIN: They are.

10 THE COURT: We can agree on that.

11 MR. DADAY: Yeah.

12 THE COURT: Okay. And Rinaldi involves
13 absentees or mail-ins or does it make no difference?

14 MR. DADAY: It was a -- yes, that's
15 correct. The ballot, it was a paper ballot that
16 they failed to fill in the oval. It was a write-in
17 ballot. The parties were writing in Mr. Rinaldi's
18 name, they wrote it in, but failed to fill in the
19 oval.

20 THE COURT: Okay.

21 MR. DADAY: The Pennsylvania Supreme
22 Court and the Department of State have interpreted a
23 dating requirement for mail-in ballots to be
24 mandatory, and that the failure of the voter to
25 comply with these same shall result in the defective

1 ballot being uncounted. The statute is very clear.
2 It is unambiguous. 3150.16(a) states that the
3 elector shall then fill out, date, and sign the
4 declaration printed on such envelope.

5 This issue was addressed by the Supreme
6 Court in the case of *In Re: Canvass of Absentee and*
7 *Mail-in Ballots of November 3rd, 2020*. In that
8 case, Justice Donohue authored an opinion announcing
9 judgement to the court concluding that the violation
10 of the dating requirements for the main-in ballots
11 under the Code does not warrant the rejection of the
12 ballots.

13 But because the Justice Donohue had
14 authored the opinion as announcing judgment of the
15 court, this is not a precedent to the courts of the
16 State of Pennsylvania. Justice Dougherty, who was
17 joined by Chief Justice Saylor and Justice Mundy,
18 filed a concurring and dissenting opinion.

19 In that concurrence, he states: In my
20 opinion, there is an unquestionable purpose behind
21 requiring electors to date and sign the declaration.
22 And as Judge Brobson observed below, the date on the
23 ballot envelope provides proof of when the elector
24 actually executed the ballot in full, ensuring that
25 their desire to cast it in lieu of appearing in

1 person at a polling place. The presence of the date
2 also establishes a point in time against which to
3 measure the elector's eligibility to cast the
4 ballot.

5 Justice Wecht also issued a concurring
6 and dissenting opinion. And in his opinion, he
7 states that thus, in future elections, I would treat
8 the date and sign requirement as mandatory in both
9 particulars, with the omission of either item
10 sufficient without more to invalidate the ballots.

11 THE COURT: Well, he does raise another
12 more, though, doesn't he? In his last footnote.

13 MR. DADAY: I'm sorry.

14 THE COURT: Doesn't Justice Wecht in
15 his last footnote raise another, it's not so simple?
16 He doesn't -- he says in his opinion, without more,
17 he would invalidate the ballots for failure to have
18 the date. Correct?

19 MR. DADAY: That is correct.

20 THE COURT: But then if you read his
21 final footnote, he raises another issue. It's No.
22 54. He says: The OAJC, meaning the opinion of the
23 court, the judgment of the court, observes that the
24 Democratic National Committee argues, with some
25 persuasive force, that the campaign's requested

1 interpretation of Pennsylvania's Election Law could
2 lead to a violation of the federal Voting Rights Act
3 by asking the state to deny the right to vote for
4 immaterial reasons.

5 No -- he goes on, and he cites the
6 opinion, the OAJC opinion. He refers to Federal
7 Statute 52 U.S.C. 10101(a)(2) and he quotes: No
8 person acting under color of law shall deny the
9 right of any individual to vote in any election
10 because of an error or omission on any record or
11 paper relating to any application, registration, or
12 other act requisite to voting, if such error or
13 omission is not material in determining whether such
14 individual is qualified under State law to vote in
15 such election, close quote.

16 Then Justice Wecht goes on to say: The
17 OAJC does not pursue this argument, except to
18 acknowledge a handful of cases that might be read to
19 suggest that the name and address, and perhaps even
20 the date requirement could qualify as, quote, not
21 material in determining whether such individual is
22 qualified under State law to vote, close quote.

23 Given the complexity of the question, I
24 would not reach it without the benefit of thorough
25 advocacy. But I certainly would expect the General

1 Assembly to bear that binding provision in mind when
2 it reviews our Election Code. It is inconsistent
3 with protecting the right to vote to insert more
4 impediments to its exercise than considerations of
5 fraud, election security, and voter qualifications
6 require.

7 So he does raise another issue. It's
8 not so simple, even in Judge Justice Wecht's mind,
9 that the statute says, you got to sign and date it.
10 I agree that's what the statute says. We all agree
11 on that. But the footnote raises, this is not so
12 simple. There's a whole other issue here. And I
13 guess that's my concern. And when you cite Judge
14 Brobson's quote, we don't have any fraud issues here
15 in this case.

16 That's what has me troubled by this
17 case is that all the reasons that the state -- the
18 legitimate reasons that the state would have in
19 imposing requirements before somebody can exercise
20 their right to vote or before the vote is counted,
21 they don't seem to apply in this case because you've
22 all stipulated there's no fraud.

23 The ballots were received on time.
24 There's no issue. What is the importance of the
25 date here in these 261 ballots? Why is it

1 important? We don't even know if the date that the
2 elector put on the ballot on the envelope is
3 accurate.

4 It could have been an inaccurate date.
5 Who cares? They could have backdated it two or
6 three days. They could have predated it. Right?
7 What difference does it make other than the fact,
8 and it's important, I'm not minimizing it, other
9 than the fact that the statute requires the date?

10 MR. DADAY: Well, the statute requires
11 it. And I believe Judge Brobson's observations are
12 directly on point.

13 THE COURT: But not applicable here.

14 MR. DADAY: I disagree.

15 THE COURT: Well, where's the fraud?

16 MR. DADAY: I don't think you have to
17 show fraud.

18 THE COURT: Where's the concern?

19 MR. DADAY: I don't think the fraud is
20 an issue here. The question is whether it's
21 supposing -- I think the question really comes down
22 to is, he says: The date on the ballot envelope
23 provides the proof of when the elector actually
24 executed the ballot in full.

25 THE COURT: Who cares? What's the

1 legitimate purpose whether the elector did it on the
2 date the elector says he did or a day or two before
3 or after? There's no question about these ballots
4 other than the fact it doesn't have the date.
5 Here's my problem. We're dealing with a fundamental
6 right to vote, and I think the state has legitimate
7 concern to make sure that there's no fraud involved
8 in the process.

9 I get that. We all agree with that.
10 But all the case law that you're referring to has
11 these provisions there in the context of protecting
12 against something bad happening; fraud. We've
13 already stipulated here. There's no fraud. And I'm
14 trying to under -- doesn't -- if the state is going
15 to interfere, I shouldn't use a negative word like
16 interfere.

17 If the state is going to have some
18 impact on one's exercise of a fundamental right, the
19 right to vote, doesn't there have to be some
20 rational connection with that impediment, with that
21 hurdle, in order for the state to justify that
22 measure?

23 MR. DADAY: Well, for instance, what
24 would happen if the person that filled out the
25 ballot was not of age at the time he filled out the

1 ballot and signed it? We wouldn't know whether or
2 not that person was qualified to vote at the time.

3 THE COURT: I don't know. I mean, I
4 don't know whether putting a date on that envelope
5 demonstrates whether the person is of age or not.
6 I'm assuming that's a registered voter. I'm
7 assuming when the voter registered, the voter
8 certified what his date of birth was, and that
9 person is now enrolled on the voter rolls.

10 So now the person gets the envelope as
11 a mail-in and puts the date on it that he exercised
12 it. But, again, there's no investigation that any
13 of these ballots were fraudulent, that any of these
14 electors were not eligible to vote. You've all
15 stipulated they were. That's my problem that you're
16 throwing up things that, yeah, that could happen,
17 but it hasn't in these 261 cases.

18 Suppose the statute read this. The
19 statute said the elector shall then fill out, date,
20 sign the declaration and include your COVID
21 vaccination status. Right? The COVID vaccination
22 status has nothing to do with the exercise of the
23 right to vote.

24 You would probably be the first one,
25 and I bet you everybody here would say, that's

1 crazy. Somebody should have the right to vote
2 whether they elect to be vaccinated or not
3 vaccinated. Whether one's vaccinated has no
4 rational connection to the exercise of this
5 fundamental right. Fair? Is that fair?

6 MR. DADAY: Fair.

7 THE COURT: Okay. So now you're
8 conceding that even though the statute might say you
9 have to tell us what your COVID vaccination status
10 is, the Court would have the obligation to say,
11 that's not a rational requirement. Strike it down.
12 Right?

13 MR. DADAY: I don't think you would
14 have the ability to do that, no.

15 THE COURT: Well, who would?

16 MR. DADAY: Maybe the Supreme Court. I
17 don't know.

18 THE COURT: Well, how does it get to
19 the Supreme Court? Don't I have to do it first? I
20 mean, I'm not trying to be flip. I'm trying to
21 understand exactly where we are here, and that's my
22 confusion. Suppose the statute said in addition to
23 signing and dating it, you need to disclose your
24 credit score. Right? Because I want to see if you
25 pay your bills, if you're a responsible citizen.

1 MR. DADAY: I think the date is a
2 little bit more important than your credit score --

3 THE COURT: You need to tell me --

4 MR. DADAY: -- and your COVID
5 vaccination.

6 THE COURT: It may well be. It may
7 well be.

8 MR. DADAY: I think it goes a lot
9 further than that. I can tell you in my career as
10 an attorney and having lived a pretty decent life
11 here at 62, I sign and date everything.

12 THE COURT: Right.

13 MR. DADAY: And it's just -- it's the
14 way we do business.

15 THE COURT: Right.

16 MR. DADAY: It's, you know, what if so
17 for instance, many people out there, I'm sure
18 there's lots of attorneys out there who have their
19 clients sign their verification and then not date it
20 so that they can date it at a later date.

21 THE COURT: Right.

22 MR. DADAY: Is that appropriate?

23 THE COURT: Is it appropriate?

24 MR. DADAY: No.

25 THE COURT: Are we dealing with a

1 fundamental right, the exercise, the right to vote?
2 Again, I need to understand, and you need to help
3 me. Normally, yeah, I agree with you. Almost
4 everybody -- almost it's a knee-jerk reaction, sign
5 and date this thing. With almost everything that we
6 sign in life, we sign it and date it.

7 Why is the date in these 261 ballots
8 critical when you've already stipulated there's no
9 fraud here? It doesn't make any -- and, in fact,
10 what difference does the date make here? Nobody's
11 trying to figure out whether these are accurate
12 dates or not. It's irrelevant. That's what I'm
13 trying to understand.

14 MR. DADAY: Then why would the
15 Governor, and through the Department of State, send
16 out this guidance from the Department of State
17 saying that you must sign it and date it if they
18 didn't believe that it was consistent with Judge
19 Wecht's opinion?

20 THE COURT: Because I think they
21 honestly believe that, that's what's going to be
22 required by the Supreme Court consistent with
23 Justice Wecht's decision. Yeah. Look, there can be
24 differences of opinion. And I'm trying to probe
25 with you, how solid is your position or the

1 Department of State's position or the legislature's
2 position? Isn't that what we're supposed to be
3 doing here?

4 MR. DADAY: Right. When I read a
5 statute and it says shall, it's mandatory as far as
6 I'm concerned.

7 THE COURT: Well, that's another
8 subject, but yes.

9 MR. DADAY: That's what it says, and
10 that's what it should be. It's not may. They could
11 have put may down. They could have equivocated and
12 said, well, you don't have to put your date down.
13 But they said shall date and sign.

14 THE COURT: Except there's a hundred
15 years of jurisprudence in Pennsylvania when shall
16 doesn't mean shall.

17 MR. DADAY: I disagree. Only under
18 certain exceptions, and those exceptions don't apply
19 here.

20 THE COURT: Why not? Why not?

21 MR. DADAY: There's no evidence that,
22 that applies.

23 THE COURT: Suppose the legislature
24 instituted a literacy test before one could vote.
25 Right? Just because the legislature says it has to

1 do that -- the legislature does that, that doesn't
2 mean the courts accept that at face value. We probe
3 it to understand, is this right? Does this have a
4 rational relation to the exercise of the franchise,
5 the vote? I mean, isn't it -- aren't the courts
6 supposed to protect fundamental rights? You'd agree
7 with that?

8 MR. DADAY: Well, I question -- I know
9 that the right to vote is in our constitution and
10 it's statutory. Whether it gets to the status of
11 what we consider to be a fundamental right, I don't
12 know the answer to that. I haven't researched that.

13 THE COURT: There's Supreme Court
14 authority for that.

15 MR. DADAY: I don't know. I don't
16 know. I haven't researched that, it wasn't part of
17 the process for today. So I can't say that it's --

18 THE COURT: Well, it wasn't part of the
19 process that you made.

20 MR. DADAY: Right.

21 THE COURT: And everybody else. Nobody
22 else addressed it either. I'm not just picking on
23 you.

24 MR. DADAY: Right.

25 THE COURT: I'm picking on all of

1 them --

2 MR. DADAY: Correct.

3 THE COURT: -- because that issue was
4 not addressed. I cut you off. I didn't mean to.

5 MR. DADAY: No, that's okay.

6 THE COURT: It wasn't meant to be
7 disrespect.

8 MR. DADAY: I just think you have to go
9 back and look at the makeup of the Supreme Court.
10 There was four justices that said that this is a
11 mandatory, this is a required matter. Justice Wecht
12 was very clear about the fact that it's mandatory.
13 He --

14 THE COURT: Well, he was clear in this
15 sense: He said, yeah, it's mandatory. I grant you
16 that. But he didn't apply it in 2020. He said,
17 we're going to let it go this year because of all
18 the confusion. In his words, his ruling is
19 prospectively only. Right?

20 MR. DADAY: Correct.

21 THE COURT: And he invited the
22 legislature to clarify it. Legislature hasn't done
23 anything. So I don't know --

24 MR. DADAY: But he didn't qualify that
25 in his actual opinion.

1 THE COURT: Pardon me?

2 MR. DADAY: It was his footnote.

3 Correct?

4 THE COURT: No, the footnote that I
5 read is the federal issue.

6 MR. DADAY: Oh, okay.

7 THE COURT: Yeah. No, he invites the
8 legislature to clarify this.

9 MR. DADAY: And wouldn't that be
10 considered dicta?

11 THE COURT: Well, may be. But the
12 legislature hasn't taken Justice Wecht up on his
13 invitation. So now --

14 MR. DADAY: I think the Republicans
15 actually did present an amendment to the act.

16 THE COURT: But it hasn't been enacted.

17 MR. DADAY: Well --

18 THE COURT: I mean, that's the law.

19 MR. DADAY: Unfortunately, that's the
20 process that we go through here.

21 THE COURT: I didn't mean to cut you
22 off, if you're not finished.

23 MR. DADAY: Well, I did want to add,
24 and I think it's very important, it's absolutely
25 important; it's the fact that the county voter

1 registration office actually went ahead, as I
2 indicated, and made major changes to the ballot. It
3 includes the instruction that your ballot must have
4 the following to be counted and included. You must
5 -- you sign and date the voter's declaration in your
6 own handwriting.

7 And it says by the signature block that
8 date is required. And, again, with the mail-in
9 ballot or the instruction card that is sent out to
10 every voter, it specifically says you got to sign
11 and date the return. And it specifically says that
12 if you do not follow these instructions, your ballot
13 will be rejected. I think if you take the four
14 Supreme Court justices that voted to exclude undated
15 mail-in ballots, we have to conclude that, that is
16 precedence here in Lehigh County.

17 THE COURT: And I think that's your
18 strong argument. Yeah, I agree. I think that's
19 your strong argument.

20 MR. DADAY: Thank you.

21 THE COURT: If you can read the tea
22 leaves. Right?

23 MR. DADAY: Right.

24 THE COURT: If you can read the tea
25 leaves, it looks like the Supreme Court is going to

1 go four to three that the statute says, you shall
2 sign and date. You have to date it. Right?

3 MR. DADAY: Correct.

4 THE COURT: Now, I know there's
5 jurisprudence elsewhere that says shall doesn't mean
6 shall, but that's your strong argument.

7 MR. DADAY: Thank you. And lastly, I
8 think, obviously, Mr. Ritter requests that this
9 Court issue an order reversing the decision of the
10 board of elections.

11 THE COURT: I understand.

12 MR. DADAY: Thank you.

13 THE COURT: Thank you, Mr. Daday.

14 Mr. Mazin.

15 MR. MAZIN: Yes, Judge. I would ask
16 that Mr. Bonin present his argument first, if that's
17 okay.

18 THE COURT: Mr. Bonin.

19 MR. BONIN: Thank you, Judge. I want
20 to go over the procedural issues first, and then the
21 substantive issues. On the procedural issues, none
22 of the sections of the election code cited by
23 Mr. Ritter's counsel apply here. This matter does
24 not involve a challenge to ballots.

25 A challenge to ballots under the

1 election code means an effort to exclude ballots
2 from the count, and it's a preelection challenge.
3 That has nothing to do with what we're doing here.
4 They then cited the Rinaldi case, which regards a
5 recount of ballots. A recount of ballots --

6 THE COURT: Let me ask you this.

7 MR. BONIN: Sure.

8 THE COURT: Why isn't that not a
9 challenge? The issue is, do we count the ballots or
10 we don't count the ballots? That's the question.
11 Right? So isn't that a challenge to the ballots?
12 Or how else do you describe it? What other word
13 would you use?

14 MR. BONIN: I would not use the verb
15 challenge to describe an effort to include -- if it
16 had said challenge to the handling of ballots, I
17 might agree with that. But this says challenge to
18 ballots.

19 THE COURT: So you mean nobody can
20 challenge it because it doesn't fall within your
21 definition of the election code?

22 MR. BONIN: Well, no. There are other
23 means to question the board of elections' handling
24 of particular ballot envelopes, and these are the
25 procedures that we availed ourselves of here. We

1 asked, you know, we inquired as to whether the board
2 of elections itself had made any decisions on this
3 issue, and we asked that it be placed on the Board's
4 election for the Board's review.

5 They heard evidence. They heard legal
6 argument. We've -- we followed -- we followed the
7 prescribed procedures. And, in fact, there was
8 nothing in the election code saying that this isn't
9 the way to handle it. This is what's known as the
10 computation process, the actual first time going
11 through and counting of the vote.

12 It is absolutely within the Board's
13 discretion. I believe it was Section 3154 that
14 said, of the election code, this is what they do,
15 and sometimes they are called in to make these
16 decisions on groups of ballots or on individual
17 ballots. We asked them to consider this as part of
18 their agenda, and they did so.

19 I don't know what else to say as to
20 that other than we not only, you know, followed the
21 procedure that is in the election code, we followed
22 the procedure which Mr. Benyo, the chief clerk of
23 elections, directed us to follow. If, you know, if
24 he had said, you know, show up on Wednesday, we
25 would have been there on Wednesday.

1 He said the Monday meeting where we're
2 also discussing the provisional ballots is the
3 meeting where you can raise this issue, and so we
4 did so. But I also will say, this doesn't fall
5 under Rinaldi in the recount procedures because
6 recounts deal with, how do you interpret a ballot
7 that's already been opened?

8 You know, now that's it's been -- now
9 that we've determined that this voter is valid, now
10 that the ballot has been separated from the voter,
11 you know, did they fill in the bubbles correctly?
12 Did they cast write-in votes correctly? That's not
13 what's going on here. And, in fact, that process is
14 completely separate from the voter's identity.

15 At that point, the ballots are here,
16 the envelopes are opened, and they're here and there
17 are no questions at that point as to whether this
18 person was a valid voter who cast a valid ballot
19 properly. So any discussion of recount procedures
20 is off the mark here. We're not in any recount
21 mode.

22 You know, once all of the ballots are
23 counted and, you know, we see where the results are,
24 either of the candidates in this race or any of the
25 candidates in any race, you know, have that ability

1 to look at the ballots and have them counted again
2 as -- you know, as going on right now with this
3 statewide Commonwealth Court race; but that's not
4 this.

5 So we do believe that we have followed
6 the proper procedures; that the Board was correct to
7 make, you know, to take this on and to take this
8 vote; that Mr. Ritter, you know, was represented by
9 counsel at those procedures. They made their -- you
10 know, so any argument that, you know, about notice
11 is off the mark here. They were there. They
12 argued. The transcript respects that -- it reflects
13 that.

14 So I believe that this matter is
15 properly before the Court. So as to why we believe
16 the decision should be upheld, it really is -- it's
17 a two-step argument, you know, both emanating from
18 Justice Wecht's concurrence and dissent. And, you
19 know, I don't want to gild the lily too much because
20 you've read the briefs, you've voiced some of these
21 arguments yourself.

22 But it's a two-part question. Number
23 one, you know, were there sufficient warnings as to
24 the consequences for failure to sign and date the
25 ballots? Obviously, we have presented to the Board

1 below and, you know, is attached to our briefs, you
2 know, we see the Lehigh envelopes. We can see the
3 Philadelphia Lehigh declaration envelopes by way of
4 comparison. So there is this sort of visual and
5 subjective evaluation for this Court to do.

6 THE COURT: But what evidence do I have
7 in order to decide the case, oh, it works now? What
8 evidence in the record do I have that the
9 corrections, the changes that the board of elections
10 made for the November 2021 General Election are
11 insufficient? It does say --

12 MR. BONIN: I think --

13 THE COURT: It does say -- there's the
14 block. Mr. Benyo read the instruction, you don't
15 sign and date this thing, your ballot is not going
16 to be counted. I mean, there's no evidence about
17 the size of the type, where it's located, how it's
18 highlighted. And do I just decide viscerally that
19 I'm not happy with that?

20 MR. BONIN: No. I think the best
21 objective evidence is that 260 out of two hundred
22 and -- 22,000 mail-in voters were rejected on this
23 basis, more than one in a hundred. It is an
24 objective standard to look at, and it is almost
25 double the rejection rate of the Philadelphia and

1 Allegheny ballots in the 2020 Election, which the
2 court by a four to three margin decided, you know,
3 the court, you know, by a four to three margin
4 decided as to the 2020 Election that these elections
5 should be counted because there was not sufficient
6 warning.

7 And if, you know, the .65 percent in
8 Philadelphia and the .67 percent in Allegheny in
9 2020 was sufficient to demonstrate to the Supreme
10 Court that there was insufficient warning, then this
11 1.18 percent should be. I mean, Justice Wecht in
12 the Pennsylvania Democratic Party decision, which we
13 also cite in our brief, you know, invoked the free
14 and equal elections clause, which Your Honor has.

15 And he said that, that would be
16 triggered if there were a con -- I forget if he said
17 constitutionally troubling or constitutionally --
18 let me try the right language here -- a
19 constitutionally intolerable ratio of rejected
20 ballots. I think that's what we have here. I think
21 that when more than one out of every hundred voters
22 is excluded on that basis, it is constitutionally
23 intolerable.

24 If you had a line outside a polling
25 place, if these people had showed up at the polls

1 and there were 500 people in line and five of them
2 were just plucked out of the line and said you
3 cannot vote today, sorry, you didn't quite do it
4 right, I think we would all be bothered by that.
5 And I do think that, that does offend the free and
6 equal elections clause and the constitutional right
7 to vote as guaranteed by the Pennsylvania
8 Constitution.

9 I guess the other thing that I do want
10 to note because Mr. Daday did raise the question of
11 legislative acts that reform this, and Your Honor is
12 right to correct -- to note that they haven't been
13 enacted yet, nor does the general assembly's
14 proposed enacted H.B. 1800 address this issue at
15 all.

16 They do not remove the sign and date
17 requirement. They certainly don't remove the date
18 requirement. They prescribe nothing as to the form
19 of the ballot declaration envelope. So even to the
20 extent that opposing counsel wants to say, well, the
21 legislature is working on it, they, in fact, did not
22 listen to -- at least yet listen to Justice Wecht's
23 directive. They have done nothing to reform this
24 procedure.

25 And then finally, Judge, you know, I do

1 appreciate that, you know, this Court recognizes, as
2 Justice Wecht did, that there is also the federal
3 voting rights issue here -- Voting Rights Act issue
4 here and the question of materiality. And
5 especially because it has been stipulated out of
6 this case, there was no fraud.

7 There is no question as to the
8 eligibility of any of these voters. I think this
9 Court is right to question whether there is a
10 sufficient -- I don't even think it would be
11 rational basis. I think when you're talking about
12 a, you know, something as compelling as the right to
13 vote --

14 THE COURT: Usually it's a stepped-up
15 standard.

16 MR. BONIN: Some stepped-up standard of
17 scrutiny beyond national basis.

18 THE COURT: Fundamental right triggers
19 strict scrutiny.

20 MR. BONIN: Yeah, it should be.

21 THE COURT: I think.

22 MR. BONIN: Yeah, and even if we were
23 to say, you know, strict -- and it even doesn't need
24 to be strict in theory, fatal in fact. But even if
25 just a normal strict scrutiny is there, a -- I'm

1 trying to -- you know, an absolutely necessary and
2 compelling basis for this restriction, there isn't
3 here.

4 As Mr. Benyo testified before the board
5 of elections, which is now part of the record here,
6 and consistent with the directives of the Department
7 of State, the date provided, when it is provided,
8 does not matter. You could provide your birth date.
9 You could provide the date of the signing of the
10 constitution. It doesn't matter. Your ballot will
11 be accepted as long as there are any numbers on that
12 line. And if that's the case, there really is no
13 basis for this requirement.

14 THE COURT: But that wasn't Mr. Benyo's
15 initial decision. The initial decision was, we
16 count the ballots. The Board overruled him.

17 MR. BONIN: Well, no. It's that his
18 initial decision was to count the ballots which
19 contained any date on them whatsoever. And that
20 decision has not been challenged by any party. So I
21 don't know at this point, you know, testimony is
22 over. I don't know how many ballots there were
23 which contained dates other than the date of voting,
24 but he testified before the board of elections that
25 there was some number of them, and they were counted

1 in this election.

2 You know, what we would ask, Judge, is
3 an order sustaining the decision of the county board
4 of elections and directing the county board of
5 elections to proceed immediately to the opening and
6 counting of these ballots so they could be included
7 within the total prior to certification. And with
8 that, we rest.

9 THE COURT: Okay. Mr. Mazin.

10 MR. MAZIN: Thank you, Judge. On the
11 procedural issue, the Board conducted a hearing on
12 the merits. This Court has now conducted a hearing
13 on the merits where both parties appeared and were
14 represented. So I don't see any harm or prejudice.
15 I understand the procedural argument, but I just
16 don't see a procedural defect. And I think you need
17 to show prejudice in order to have it invalidated on
18 that ground.

19 With regard to the substantive issues,
20 I would note that the issue presented, which
21 involves the proper interpretation of the election
22 code, presents a question of law. And as a result,
23 this Court's standard and review is de novo and the
24 scope review is plenary. I would also note, general
25 principles in interpreting the election code are

1 that we must remain mindful of the longstanding and
2 overriding policy in this Commonwealth to protect
3 the elective franchise.

4 And although election laws must be
5 strictly construed to prevent fraud, they ordinarily
6 are construed liberally to protect the right to
7 vote. Thus when reviewing this, the lens through
8 which it must be reviewed is to enfranchise and not
9 disenfranchise the elector.

10 On the state department guidance, I
11 would just note that toward the end of that
12 guidance, there is a statement by Deputy Secretary
13 Marks to the effect that, we also believe that it is
14 prudent to again remind you of our previous
15 clarification of 10/25/2020. As noted in that
16 communication, there is no basis to reject a ballot
17 for putting the wrong date on the envelope, nor is
18 the date written used to determine the eligibility
19 of the voter. You should process these ballots
20 normally.

21 As a result, the Board felt there was
22 an inconsistency on the guidance. On the one hand,
23 it states where you don't date it, it doesn't count.
24 On the other hand, it states you could put the wrong
25 date in and it does count. So there was some

1 concern that, that could lead to an absurd result.

2 THE COURT: So what's the significance
3 of the date? You're right. If you put a date on
4 it, doesn't have to be accurate, just put a date on
5 it, they're instructed to count the ballot.

6 MR. MAZIN: Correct.

7 THE COURT: If you don't put a date on
8 it, they're instructed not to count the ballot. So
9 my question is, what's the significance of the date?

10 MR. MAZIN: I mean, I think that
11 somewhat inconsistent guidance shows that there's
12 really not an importance to it.

13 THE COURT: Well, one could make out an
14 argument in a certain setting that the date might be
15 important in order to discern fraud. Right?

16 MR. MAZIN: Right.

17 THE COURT: But there's no fraud here.

18 MR. MAZIN: And there's no evidence of
19 fraud here. And just finally, Judge, just to
20 explain the Board's rational, and this is set forth
21 in my brief, the Board believed that although the
22 failure to include a date was a technical violation,
23 it did not warrant disenfranchisement of hundreds of
24 Lehigh County voters.

25 As Your Honor pointed out, there's no

1 dispute that the voters at issue expressed their
2 intent to cast the ballots. There's no dispute that
3 they were timely completed and received by the
4 county. And the fact that a date was omitted did
5 not -- does not constitute a compelling reason to
6 invalidate ballots.

7 And the last point I would make is the
8 inconsistency I pointed out with regard to the
9 Department of State guidance. For these reasons,
10 the Board respectfully requests this Court affirm
11 its decision to include the 261 mail-in ballots in
12 the canvass of the November 2nd, 2021 Municipal
13 Election.

14 THE COURT: So why didn't any of you
15 pick up Justice Wecht's footnote and give me some
16 law or argument on that issue? Am I missing the
17 boat? Is Justice Wecht missing the boat on who
18 raised this issue, this concern?

19 MR. BONIN: Judge, we included it on
20 Page 7, Footnote 5 of our brief.

21 THE COURT: You relegated that issue to
22 a footnote? Yes.

23 MR. BONIN: We relegated it --

24 THE COURT: Yes.

25 MR. BONIN: I was, you know, I was

1 trying to -- I don't mean to be flip. I was trying
2 to be brief in the brief. I mean, there are --
3 insofar as I was the counsel in 2020 who raised that
4 argument in the Pennsylvania Democratic Party
5 litigation, yes, there are further pages I can
6 submit on this issue if the Court would like further
7 briefing on it.

8 THE COURT: Well, I guess I'm bothered
9 by that possibly. I don't think it's a remote
10 possibility that, that is the possibility that
11 Justice Wecht raises in his footnote. I'm
12 disappointed that nobody has picked it up either
13 here or in the Supreme Court decision.

14 And am I missing the boat? Am I off
15 base when that omission bothers me because I think
16 that's a real issue? And I'm wondering, why hasn't
17 anybody raised that issue? Why hasn't it been
18 debated and discussed and addressed?

19 MR. MAZIN: Judge, I would just note,
20 and this will be obvious from reading the
21 transcript, but this issue was not raised before the
22 Board.

23 THE COURT: I understand. And that
24 bothers me. That's why I'm curious why we all --
25 have we all missed the boat on this or is this not

1 the boat to sail on? And Justice Wecht raises this
2 issue. Unless somebody tells me it's absolutely
3 frivolous, then it indicates to me that he's got an
4 unresolved issue out there as to how to decide this
5 case, and he leaves it for another day.

6 And he asked for, at some future
7 litigation it will be addressed, I forget the
8 wording he uses in the normal course of advocacy.
9 Well, the day is today, as far as I'm concerned. I
10 mean, here we are. So I just, that raises a
11 question in my mind as to the force that I need to
12 give to Justice Wecht's position.

13 I know him. I respect him highly. We
14 don't have to agree, but it just raises a question
15 in my mind that I'm not so sure it's so settled in
16 his mind when he inserts that footnote in his
17 opinion. I think he's extending an invitation for
18 lawyers out there to say, you know something, folks?
19 You ought to think about this and you ought to
20 address it the way it should be addressed so that we
21 can give due consideration to it.

22 MR. DADAY: If it was so important, why
23 didn't he put it in the body of his opinion, you
24 know?

25 THE COURT: I think because he doesn't

1 want to decide that issue because nobody raised it.

2 That's my --

3 MR. BONIN: No, it was raised. I mean,
4 he raised it because it was -- it was briefed in
5 that case. It was briefed in the preelection case,
6 Pennsylvania Democratic Party. It was raised by the
7 Democratic National Committee interveners in both
8 cases.

9 THE COURT: And it wasn't addressed on
10 the merits? Besides --

11 MR. BONIN: It was unnecessary to
12 resolve on the merits because he went with the
13 insufficient warning as to this election.

14 THE COURT: Okay.

15 MR. DADAY: Your Honor, I do have to
16 bring up one point.

17 THE COURT: Sure.

18 MR. DADAY: At the hearing before the
19 board of elections, Attorney Mazin asked the
20 question, what authority do you have to raise your
21 challenges to this matter before the Board? And we
22 really didn't get a response. And today I don't
23 think we've gotten a response either as to what
24 method or what statutory proceeding he is utilizing
25 to get to the board of elections, and then --

1 THE COURT: I'll try to -- I'll try to
2 address it in my decision.

3 MR. DADAY: I'm sorry?

4 THE COURT: I'll try to address it in
5 my decision. I want to look at it. Mr. Daday, I
6 really don't know how I'm going to decide that.

7 MR. DADAY: Again, he talked about
8 utilizing Section 3154. I don't know if he's
9 actually relying on that, that it requires that
10 there be an affidavit with three voters from the
11 district that's verified.

12 THE COURT: Okay. Anything else,
13 Counsel?

14 MR. BONIN: No. Again, you cited
15 procedures as to recounts. And, you know, the board
16 of elections, you know, is charged with supervising
17 the computation of the vote. You know, during --
18 during that process, they rule on the sufficiency of
19 ballot envelopes.

20 They did it as to provisional ballots
21 earlier in the hearing, and then they moved on to
22 the mail ballots. It is entirely within their
23 authority, you know, supervising Mr. Benyo and his
24 staff to direct them as to how, you know, how to
25 apply Pennsylvania Law to these ballots.

1 THE COURT: I want to thank you all.

2 MR. DADAY: What -- just there are four
3 mechanisms that are set forth in the election code.

4 THE COURT: He addressed this twice or
5 at least twice in argument this morning.

6 MR. DADAY: Okay.

7 THE COURT: You've addressed it once.
8 Since he addressed it last, now you would like to
9 address it so you're the last man standing. Right?
10 That's the way it works here, doesn't it?

11 MR. DADAY: That's great.

12 THE COURT: No, I heard your argument.

13 MR. DADAY: Right. There's four
14 procedures, four processes. He didn't follow any
15 one of them. So thank you, Your Honor.

16 THE COURT: So you did get the last
17 word.

18 MR. DADAY: There you go.

19 THE COURT: All right. I'll get an
20 order and opinion out. I will try to do it very
21 quickly. I understand the pressure that you're all
22 under. I shouldn't say any more, but I will. To
23 Mr. Cohen and to Mr. Ritter, I've known both of them
24 for many years. This is my 30th and last year here
25 as a common pleas judge. And I will tell you, it's

1 a great job. It really is. But it's not the be-all
2 and end-all of life.

3 So whatever happens here or at the
4 appellate level, I really wish both of you well and
5 hope that in the long-term, it turns out to be
6 everything that you wanted it to be; or if it's not,
7 that you've gotten to a better place. Because as
8 great a job as this is, there are lots of
9 opportunities out there to do good and to do well.
10 Good luck. Thank you.

11 MR. DADAY: Thank you, Your Honor.

12 MR. BONIN: Thank you, Judge.

13 MR. MAZIN: Thank you, Judge.

14 (Whereupon, the proceedings concluded
15 at 1:00 p.m.)
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CERTIFICATION

I hereby certify that this transcript of proceedings is true and correct and meets the format specifications established by the Supreme Court of Pennsylvania in Rule 4010.

DATE: December 3, 2021

Leah C. Nelson

LEAH C. NELSON
Official Court Reporter

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